

DRAFT

PROPOSED RULE 107 REBATES AND SPREAD PRICING REPORTS

TABLE OF CONTENTS

SECTION 1. AUTHORITY

SECTION 2. DEFINITIONS

SECTION 3. APPLICABILITY

SECTION 3. REBATE REPORTS

SECTION 4. SPREAD REPORTING DATA & CERTIFICATION

SECTION 5. CONFIDENTIALITY

SECTION 6. PENALTIES

SECTION 7. EFFECTIVE DATE

SECTION 1. AUTHORITY

A. This Rule is issued pursuant to Ark. Code Ann. § 23-92-505 which requires pharmacy benefit managers (“PBMs”) to report to the Arkansas Insurance Commissioner (“Commissioner”) various information items in quarterly reports pertaining to rebates and spread pricing activities of PBMs. The Commissioner is authorized to issue this Rule under Ark. Code Ann. § 23-92-509 which permits the Commissioner to issue rules relating to rebates and compensation under Ark. Code Ann. § 23-92-509(a)(2)(H) and Ark. Code Ann. § 23-92-509(a)(2)(I), respectively. In addition, the Commissioner is authorized to issue rules pertaining to data reporting under Ark. Code Ann. § 23-92-509(a)(2)(F) and otherwise authorized to issue any rule not inconsistent with the “Arkansas Pharmacy Benefits Manager Licensure Act of 2018,” (hereafter, “the PBM Licensure Act”) as recently amended by Arkansas Act 994 of 2019, “An Act To Clarify The State Insurance Department’s Regulatory And Enforcement Authority Concerning Pharmacy Benefits Managers.”

SECTION 2. DEFINITIONS

A. Unless otherwise separately defined in this rule and consistent with state law, the terms or phrases as used in this rule shall follow the definitions of such terms or phrases as defined under the PBM Licensure Act.

SECTION 3. APPLICABILITY

A. This Rule is applicable to all PBMs administering prescription drug or device services for health benefit plans issued by a Healthcare Insurer as defined in Ark. Code Ann. §§ 23-92-503(2) and 23-92-503(3), and, by virtue of amendments to the PBM Licensure Act in Section Twelve (12) of Act 994, to contracts issued by organizations directly or indirectly providing services to patients under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq., or any other Medicaid managed care program operating in this State.

SECTION 4. REBATE REPORTS

A. Pursuant to Ark. Code Ann. § 23-92-505(b)(1), every pharmacy benefits manager, subject to the PBM Licensure Act, shall submit to the Commissioner the rebate reporting form, and required data requested, in Exhibit “A,” on a quarterly basis, beginning the first quarter of 2020. Exhibit “A” is hereby incorporated by reference into this Rule. The information or data as required in the Exhibit “A” report may be submitted electronically to the Commissioner, following the format of Exhibit “A.” The first quarter reports of 2020 shall also include a report for the last quarter of 2019, as advised to the industry in AID Bulletin # 7-2019.

B. Pursuant to Ark. Code Ann. § 23-92-505(b)(1)(C), on or before January 1 of each year, every pharmacy benefits manager, subject to the PBM Licensure Act, shall submit to the Commissioner, a written explanation, in sufficient detail, explaining how the aggregate amount of rebates passed on to the enrollees of each healthcare insurer at the point of sale that reduced the enrollees applicable deductible, copayment, coinsurance, or other cost-sharing amount(s) for healthcare insurer or HMO issued policies or contracts in the previous plan year.

SECTION 5. SPREAD REPORTING DATA & CERTIFICATION

A. Pursuant to Ark. Code Ann. § 23-92-505(b)(1)(D) and (E), every pharmacy benefits manager, subject to the PBM Licensure Act, shall submit to the Commissioner the spread reporting form, and required data requested, in Exhibit “B,” on a quarterly basis, beginning the first quarter of 2020. Exhibit “B” is hereby incorporated by reference into this Rule. The information or data as required in the Exhibit “B” report may be submitted electronically to the Commissioner, following the format of Exhibit “B.”

B. Every pharmacy benefits manager, subject to the PBM Licensure Act, shall submit a written certification to the Commissioner, on or before January 1 of each year, certifying that the PBM was in compliance with Ark. Code Ann. § 23-92-505(c) for healthcare insurer or HMO issued policies or contracts in the previous plan year.

C. Every healthcare insurer contracting with a pharmacy benefits manager, subject to the PBM Licensure Act, shall submit a written certification to the Commissioner, on or before January 1 of each year, certifying that the healthcare insurer authorized its contracted PBM to adhere to Ark. Code Ann. § 23-92-505(c) for healthcare insurer or HMO issued policies or contracts in the previous plan year.

D. The provisions in this Section shall also apply to an organization or entity, directly or indirectly, including its contracted PBM, providing services to patients under the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq. or any other Medicaid managed care program operating in this state.

SECTION 5. CONFIDENTIALITY

A. Pursuant to Ark. Code Ann. § 23-92-505(b)(2)(A), all data and reports collected under Section(s) 4(A) and (B) and Section(s) 5(A) and (D) of this Rule shall be considered proprietary and confidential under § 23-61-107(a)(4) and § 23-61-207; and shall not be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.

SECTION 6. PENALTIES

A. Violations of this Rule shall be considered an unfair or deceptive act or practice under Ark. Code Ann. § 23-66-205 and shall be subject to the fines, penalties or provisions under Ark. Code Ann. §§ 23-66-208, 23-66-209, 23-66-210, 23-66-211, 23-66-212, and 23-66-213.

SECTION 7. EFFECTIVE DATE

This Rule is effective after review and approval by the Arkansas Legislative Council, ten (10) days after filing of the approved Rule with the Arkansas Secretary of State.

ALAN MCCLAIN
INSURANCE COMMISSIONER

DATE

Exhibit A: REBATES

[illegible]

Exhibit B: PAYMENTS

[illegible]

Exhibit B: PAYMENTS

[illegible]